

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
Advanced Television Systems )  
and Their Impact Upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

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**COMMENTS OF INTERMEDIA PARTNERS**

**I. INTRODUCTION.**

InterMedia Partners ("InterMedia"), through its attorneys, hereby submits comments in response to the Commission's Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry (the "Fourth NPRM") in the above-referenced proceeding.

InterMedia owns and operates cable systems throughout the United States. The decisions made by the Commission in this Advanced Television ("ATV") proceeding will directly affect the competitive environment in which InterMedia operates, the technology that it uses, and the subscribers to whom InterMedia provides service. For these reasons, InterMedia respectfully offers its comments in order to assist the Commission in making reasoned decisions regarding the carriage obligations of cable operators in a digital environment.

**II. TECHNICAL AND COST ISSUES CANNOT BE ADDRESSED  
UNTIL THE COMMISSION SELECTS AN ATV STANDARD.**

In the Fourth NPRM, the Commission seeks information on the technical modifications that will be needed to enable cable systems to deliver ATV signals to subscribers and the costs that will be associated with such modifications.<sup>1/</sup> These questions

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<sup>1/</sup> See Fourth NPRM at ¶ 84.

cannot be answered until the Commission selects the ATV standard.<sup>2/</sup> As yet, that has not happened. The Grand Alliance, an industry group, has developed a proposed standard and completed construction of a prototype. However, the Advisory Committee on Advanced Television Service has yet to even make its recommendation on this proposed standard to the Commission. The Fourth NPRM also notes that the Grand Alliance standard was not designed to include Standard Definition Television ("SDTV"), a programming capability about which broadcasters have indicated substantial interest.<sup>3/</sup> In turn, a third industry group called the Advanced Television Systems Committee already has proposed a revision to the Grand Alliance standard that would incorporate SDTV capabilities. This proposed revision also is under review.

Throughout the Fourth NPRM, the Commission refers to what eventually may be offered on ATV without ever explaining how it will be provided. Such an explanation obviously will not be forthcoming until a standard is determined. Until then, the Commission should not expect commenters to guess on such complex and important issues involving costs and technology, nor should the Commission rely upon mere speculation offered in response to the Fourth NPRM.

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<sup>2/</sup> How the ATV standard is made compatible with the digital technology being developed by the cable industry raises a wide range of complicated issues that also must be resolved. Preliminary information indicates the equipment based upon the ATV standard would be incompatible with the digital transmission equipment that cable operators generally have committed to deploy.

<sup>3/</sup> It also appears that the Commission is contemplating the use of SDTV in ultimately determining exactly what programming services broadcasters will be allowed to offer on ATV channels.

**III. THE COMMISSION SHOULD NOT DETERMINE THE CARRIAGE OBLIGATIONS OF CABLE OPERATORS BEFORE IT KNOWS EXACTLY WHAT KIND OF PROGRAMMING BROADCASTERS WILL OFFER AND WHETHER THERE IS ANY DEMAND FOR SUCH SERVICES.**

InterMedia commends the Commission for its foresight in recognizing that digital television will profoundly affect the relationship between the cable and broadcast industries. At the same time, InterMedia respectfully submits that the Commission has placed the "cart before the horse" in attempting to establish the carriage obligations of cable operators before it even knows what kinds of programming broadcasters will offer via ATV and how consumers will respond to these new services.

In the Fourth NPRM, the Commission is considering whether to change its prior decision to require broadcasters to carry 100% of the same programming on both its analog and ATV channels for a certain period of time.<sup>4/</sup> The Fourth NPRM notes that if broadcasters are permitted to carry different kinds of programming on the channels, both channels might qualify for carriage.<sup>5/</sup> While many questions cannot be addressed at this stage of the ATV proceeding, one answer already is obvious: implementing ATV will be expensive, and mandating carriage of all ATV channels will financially devastate many cable operators.

To meet such carriage obligations cable operators would have to purchase and install equipment in each and every headend they operate. InterMedia, like the majority of cable operators in

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<sup>4/</sup> See Fourth NPRM at ¶ 39.

<sup>5/</sup> See Fourth NPRM at ¶ 10.

this country,<sup>6/</sup> operate numerous stand-alone small systems serving few subscribers.<sup>7/</sup> To meet an all-carriage channel obligation would entail the expenditure of literally millions of dollars by InterMedia and other similar operators.

As yet, there is no proven demand for ATV. Neither the Commission nor the broadcast industry knows what kinds of services will be offered via ATV, let alone whether consumers will be interested in them. To require cable operators to equip themselves in anticipation of serving an undefined and non-existent market simply makes no sense. Instead, the Commission, broadcasters, and the cable industry should rely on the marketplace to determine when and how to offer the ATV services being contemplated.

**IV. MANDATORY CARRIAGE OF ATV CHANNELS WILL PLACE CABLE OPERATORS AT A COMPETITIVE DISADVANTAGE WITH THE BROADCAST INDUSTRY.**

Regardless of the ATV standard chosen and the Commission's decision regarding ATV programming, a mandate to carry even one digital channel will most likely result in the carriage of all digital channels. As generally described in the Fourth NPRM, digital compression technology and a packetized transport scheme will be incorporated into the ATV standard. InterMedia believes that it will be prohibitively expensive for cable operators to purchase the sophisticated equipment necessary to separate out the various packetized information streams that will comprise the

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<sup>6/</sup> More than 65% of the cable systems in the United States are considered small systems by the Commission. See Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket No. 92-266 and MM Docket No. 93-215, FCC 95-196, 10 FCC Rcd 7393 (1995).

<sup>7/</sup> InterMedia has 570 headends, each of which serve an average of 1,183 subscribers.

digital signals transmitted by broadcasters. Thus, receipt of one channel means receipt of all.

This practical reality is fundamentally unfair, for it would force cable operators to accommodate its competitors with a multi-path channel into subscribers' homes. Cable operators and television stations already compete for viewers. ATV quite obviously offers broadcasters with a unique opportunity to be even more competitive. The cable industry should be allowed to meet this competition in the marketplace where it can deal with the broadcast industry at arm's length to negotiate carriage terms favorable to all.

**V. CONGRESS DID NOT INTEND FOR ALL ATV CHANNELS  
TO BE ENTITLED TO MUST-CARRY RIGHTS.**

Finally, and most importantly, InterMedia believes that the Commission would exceed its statutory authority if it required carriage of all ATV channels. The legislative history of the Cable Consumer Protection and Competition Act of 1992<sup>1/</sup> (the "1992 Cable Act") establishes that Congress was concerned about the demise of traditional community programming offered by local commercial broadcast stations.<sup>2/</sup> It was this concern that prompted passage of the must-carry and retransmission consent portions of the 1992 Cable Act. The focus on traditional video programming also is evident in the Commission's rules. For example, cable operators are only obligated to carry a

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<sup>1/</sup> 1992 Cable Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>2/</sup> See House Committee on Energy and Commerce, H.R. Rep. No. 628, 102d Cong. 2d Sess. (1992); Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 92, 102d Cong. 1st Sess (1991); House Committee on Energy and Commerce, H.R. Rep. No. 862, 102d Cong. 2d Sess. (1992).

broadcaster's "primary video" and related closed-captioning transmissions on the Vertical Blanking Interval.<sup>10/</sup>

Retransmissions of all other information, including teletext and subscription and advertiser supported services, are at the discretion of the cable operator. However, in the instant proceeding, the Commission appears poised to grant must-carry protection to these very services.<sup>11/</sup> The Fourth NPRM establishes that the Commission seeks to preserve free, universal broadcasting service.<sup>12/</sup> This goal can be achieved in a digital environment in the same manner as it is currently achieved; by requiring carriage of the primary video and related closed captioning signals without forcing carriage of niche and subscriber ATV signals.

Congressional directive to change carriage requirements to reflect digital transmission standards<sup>13/</sup> should not be construed as blanket authorization to require carriage of every ATV channel a broadcaster might choose to offer. The plain language of the 1992 Cable Act requires the Commission to ensure that carriage of local commercial television stations will not be

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<sup>10/</sup> See 47. C.F.R. §76.62(e).

<sup>11/</sup> See Fourth NPRM at ¶23. As the Commission notes, the current must-carry rules are subject to court challenge. See Turner Broadcasting System v. FCC, 114 S.Ct. 2445 (1994). Given the uncertain legal stature of these rules, InterMedia does not believe the Commission should rely upon them to craft carriage obligations for ATV channels. However, since the Commission accepts the validity of the must-carry rules for purposes of the Fourth NPRM, InterMedia believes the Commission should follow the rules' narrow definition of video programming eligible for must-carry status.

<sup>12/</sup> See Fourth NPRM at ¶ 6.

<sup>13/</sup> See Section 614(b)(4)(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(b)(4)(B).

compromised in a digital environment. The Commission should recognize that it has been given a narrow and limited mandate and proceed cautiously to fulfill it.

#### **VI. CONCLUSION.**

The Commission has undertaken a momentous task in crafting rules for ATV. Before it makes digital television a reality, however, the Commission must: choose a standard and determine how it will interface with the digital technology being developed by the cable industry; determine whether the cost burden placed on the cable industry is justified by the demand for ATV services; and, finally, recognize the limited authority it possesses to impose mandatory carriage obligations on cable operators in a digital environment.

Respectfully Submitted,

INTERMEDIA PARTNERS

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